Tan Phaik See v Multi Purpose Insurance Berhad

HIGH COURT (PENANG) — CIVIL APPEAL NO 12–164 OF 2003
RK NATHAN J
12 AUGUST 2004

Tort — Damages — Road accident — Claim for interest upon interest — Whether to be allowed — Rules of the High Court 1980 O 42 r 12

The plaintiff claimed for damages in a running down case which resulted in her son's death. The plaintiff had made further claim for interest upon interest. The defendant refused to pay, contending that this was precluded by s 11 of the Civil Law Act 1956. Hence, this appeal.

Held, allowing the plaintiff's appeal with costs:

(1) Once the defendant had agreed that the amount due to the plaintiff, ie the interest being merged with the damages awarded, as a new judgment debt owed to the plaintiff by the defendant as at 30 September 1994, the said total became a debt due and owing to the plaintiff from the defendant. As such, the plaintiff was entitled under O 42 r 12 of the Rules of the High Court 1980 to the said interest at 8% on the unpaid new judgment debt. Furthermore, s 11 was not applicable in the circumstances. (see paras 4, 5 and 7).

[**Bahasa Malaysia summary**

Plaintif telah menuntut ganti rugi dalam suatu kes kemalangan yang membawa kepada kematian anaknya. Plaintif telah membuat suatu tuntutan lagi untuk faedah atas faedah. Defendan enggan membayarnya, sambil mengadu bahawa ianya tersingkir di bawah s 11 Akta Undang-undang Sivil 1956. Maka, rayuan ini.

Diputuskan, membenarkan rayuan plaintif dengan kos:

(1) Bilamana defendan telah bersetuju dengan jumlah yang harus dibayar kepada plaintif, iaitu berdasarkan faedah bergabung dengan ganti rugi yang diberikan, sebagai suatu hutang penghakiman berhutang baru kepada plaintif oleh defendan pada 30 September 1994, jumlah keseluruhan menjadi hutang yang perlu dibayar kepada plaintif oleh defendan. Oleh itu, di bawah A 42 k 12 Kaedah-Kaedah Mahkamah Tinggi 1980 plaintif berhak kepada faedah 8% tersebut atas hutang penghakiman berhutang yang baru. Tambahan pula, s 11 tidak terpakai di dalam keadaan semasa (lihat perenggan 4, 5 dan 7).

Notes

For cases on claim for damages, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 215–217

Legislation referred to

Civil Law Act 1956 s 11(1)
Rules of the High Court 1980 O 42 r 12

DP Rajah (Rajah & Co) for the appellant/plaintiff
VK Dasaratharaj Pillai (VP Nathan & Partners) for the respondent/defendant

RK Nathan J:

FACTS

[1] This is a short appeal arising out of a running down case. The deceased in this case was making biscuits from his house and selling them. He did not have a license to manufacture and sell the biscuits. The mother claimed as a dependent. The defendant pleaded that since the deceased's earnings arose out of an unlicensed income it was illegal earnings. The sessions court, whilst assessing the loss of earnings however disallowed the claim. Unfortunately for the plaintiff, her appeal to the High Court was dismissed in spite of many authorities allowing the claim since each case had to be looked at individually. Examples of illegal earnings can be attributed to a habitual snatch thief, or a prostitute attempting to make a claim for loss of income because of the negligence of the defendant. When the Government is encouraging cottage industries and bearing in mind that Malaysia believes in encouraging every man and woman to be self-reliant and self-supporting, the courts must not readily strike down earnings gained out of businesses carried on without license. Not having a license is an offence as against the licensing laws. Such earnings cannot therefore be considered illegal earnings. Fortunately, the plaintiff's appeal to the Court of Appeal was successful.

[2] The plaintiff's solicitors then submitted their claim after calculations as follows:-

	Principal (RM)	Interest (RM)
a) Special Damages	2,000	
b) 4% interest on the Special Damages from 21 January 1986 being the date of accident to date of judgment being 30 September 1994		694.57
c) Pre Trial Loss	83,280	
d) 4% interest on the pre trial loss from 21 January 1986 to 30 September 1994		28,922.11
e) Post trial loss of support as on 30 September 1994	70,400	
f) Interest thereon	NIL	

Total as at 30 September 1994155,680

g) Costs of the lower court 11,763

Total 167,443 29,616

[3] Up to this point the respondent has no quarrel. Subsequently the plaintiff's solicitors made a further claim for interest on the principal sum of RM167,443 and interest amounting to RM29,616 totalling RM196,779, at 4% per annum from the date of judgment, ie 30 September 1994 to 10 April 2001 amounting to RM102,325. The grand total claimed by the plaintiff therefore was RM196,779 + RM102,325 amounting to RM299,104. The defendant paid a sum of RM266,482 and the lower court costs of RM11,763 making a total of RM278,269. The plaintiff however demanded her pound of flesh and insisted on the balance of RM20,835 (RM299,104 - RM278,269). Whilst agreeing that the calculations are all correct, Mr Dasaratharaj for the respondent refused to agree to the said balance on the premise that the plaintiff was claiming interest upon interest and was therefore precluded from doing so. Counsel relied on s 11(1) of the Civil Law Act 1956 which reads as follows:-

> Powers of Courts to award interest on debts and damages
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> In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section —
>
> (a) shall authorise the giving of interest upon interest;

[4] To my mind once the defendant had agreed that the amount due to the plaintiff as at 30 September 1994 was the principal sum of RM167,443 and the interest of RM29,616 amounting to RM196,779 the said total became a debt due and owing to the plaintiff from the defendant. In other words the interest had merged with the damages awarded, as a new judgment debt owed to the plaintiff by the defendant.

[5] The plaintiff is therefore entitled by law, that is O 42 r 12 of the Rules of the High Court 1980, which states that every judgment debt shall carry interest at the rate of 8% per annum, to the said interest at 8% on the unpaid new judgment debt.

[6] When the defendant paid a sum of RM266,482 out of the total of RM278,269, the defendant had in other words, acknowledged that the damages and interest had merged to form a fresh judgment sum. It would have been otherwise if the defendant had only paid the principal sum of RM167,443 specifically and the accrued admitted interest of RM29,616 specifically. Here by paying a cheque for RM266,4824 the defendant had not specifically raised the issue of interest being paid upon interest.

[7] There is, in my view, no place for the applicability of s 11 of the Civil Law Act 1956 in this case. Besides it is totally inequitable for the defendant insurers to sit on the moneys due to an injured person and accrue interest on that sum for their own benefit, and yet deprive the injured plaintiff of his judgment debt. I therefore allowed the plaintiff's appeal and ordered the respondent/insurers to pay the agreed balance of RM20,835 with costs to the plaintiff.

Appeal allowed with costs.

Reported by M Maheswaran